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Office of Proceedings

MAR 16 2011

March 16, 2011

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Public Record

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Ms. Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

228998

**Re: STB No. 42120 – Cargill Inc. v. BNSF Railway Company**

Dear Ms. Brown:

On March 14, 2011, complainant Cargill, Inc. filed a Reply in Opposition to Defendant's Motion to Compel Discovery. Under the expedited discovery procedures that the Board has established in this proceeding, the Board may schedule a discovery conference within 5 business days of Cargill's Reply. BNSF requests that the Board establish such a discovery conference.

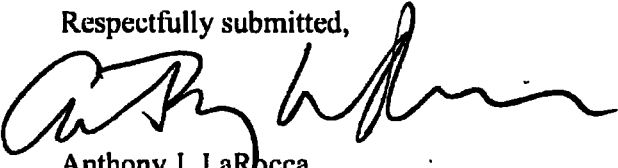
As indicated in BNSF's Motion to Compel Discovery and in Cargill's Reply, the parties had two meet and confer sessions before BNSF filed its Motion. BNSF understood from those sessions that Cargill was not willing to consider discovery proposals that would address the burden concerns it had over discovery related to injury and damages. Cargill's position was that even if BNSF could identify an approach to discovery that addressed Cargill's burden concerns, Cargill would not agree to produce any information on the contested issues on relevance grounds. It appeared to BNSF that Cargill had drawn a line in the sand on discovery issues related to injury and damages.

While Cargill's Reply is not clear on the issue of Cargill's willingness to produce information if its burden concerns are addressed, there is at least a suggestion that Cargill might agree to produce discovery if its burden concerns can be addressed. In footnote 10, Cargill states that in the meet and confer sessions, Cargill told BNSF that "if BNSF had any specific proposals, Cargill would consider them." BNSF counsel do not recall any such offer by Cargill. Nevertheless, a discovery conference would give BNSF and the Board an opportunity to determine whether Cargill is in fact willing to consider approaches to discovery on injury and damages that would address burden issues, or, as BNSF understood from the meet and confer

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sessions, whether Cargill is refusing to participate in any discovery on these issues, regardless of the scope of such discovery, until ordered to do so by the Board.

Respectfully submitted,



Anthony J. LaRocca  
Counsel for BNSF Railway Company

cc: Counsel for Cargill, Inc.